IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/03/2006

CORAM

THE HON'BLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.19388 OF 2003

B. Mahalakshmi
Old No.41/D, New No.10,
Vivek Nagar, Ambattur,
Chennai 600 053. .. Petitioner

-Vs-

1. Tamilnadu Industrial Investments
Corporation, rep. by its Branch
Managar, Ambattur Branch,
SIDCO Administrative Block Building,
Ambattur Industrial Estate,
Chennai 600 058.

2. Subramaniam
Prop. M/s. Jai Ganesh Conductors,
122, 3rd Avenue, Anna Nagar West,
Chennai 600 040. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records connected with Communication of the 1st respondent dated 3.9.2001 made in Club 11.TIIC/AMD/BO/2001-2002 and quash the same insofar as it relates to the petitioner and consequently direct the 1st respondent to return all the original deeds relating to the property morefully described in the schedule.

!For Petitioner : Mr.S.M. Loganathan for
M/s.G. Saravanakumar &
R. Anukarasu

For Respondent-1 : Mr.M.J. Jaseem Mohammed

Respondent-2 : Served - No Appearance

:J U D G M E N T

The petitioner has prayed for issuing a writ of certiorarified mandamus calling for the records connected with communication of the first respondent dated 3.9.2001 and to quash the same so far as it relates to the petitioner and to issue a direction to the first respondent to return all the

original deeds relating to the property described in the schedule.

2. The facts giving rise to the present writ petition are as follows :-
Notice dated 3.9.2001 has been issued by the Tamil Nadu Industrial Investments Corporation to the present Respondent No.2 with a copy to Thiru.T.M. Balakrishnan, 41D, Vivek Nagar, Ambattur, Chennai. Such notice purports to have been issued under Section 29 of the State Financial Corporation Act, hereinafter referred to as the Act. It relates to sanction of term loan incurred by Respondent No.2. The grievance of the petitioner is to the effect that the schedule property was never given as a collateral security by T.M. Balakrishnan, the deceased husband of the petitioner, and the second respondent taking advantage of the fact that title deeds relating to the property had been handed over to him by the present petitioner, who had borrowed Rs.50,0 00/- from such second respondent, a forged collateral security had been created in the name of T.M. Balakrishnan, even though such person had expired on 11.5.1993 and the purported security was created much later in 1995. It has been further averred in the writ petition that even though the petitioner after repaying the sum of Rs.50,000/- to the second respondent had repeatedly approached him for return of original title deeds, the second respondent was dilly-dallying in the matter on some pretext and at that stage, the notice issued by the first respondent came to the knowledge of the petitioner, who after enquiry found out about the fraudulent and forged transaction. On the basis of such averments, the petitioner has prayed for quashing the notice dated 3.9.2001, so far as it relates to the petitioner, and for a further direction to the first respondent to return all the original documents relating to the property described in the schedule.

3. A counter affidavit has been filed by the first respondent, wherein it is indicated that the second respondent was sanctioned a term loan of Rs.6.80 lakhs on 28.2.1995 and a working capital loan of Rs.6 .70 lakhs on 19.7.1995. Such loans were sanctioned in favour of M/s.Jai Ganesh Conductors, represented by its Proprietor Subramaniam, the second respondent herein. The second respondent had offered the disputed property owned by T.M. Balakrishnan as the collateral security for the working capital term loan. It has been further stated that the second respondent had violated the terms and conditions and defaulted in making the payment and thereafter the Corporation decided to take possession of the collateral security, namely, the disputed property. It has been further submitted that :
"7. ... While exercising the powers under Sec.29 of the SFCs Act, this respondent came to know that impersonation has occurred while creating the mortgage due to the fraudulent act of the promoter of the Concern. Hence the respondent Corporation preferred/lodged a criminal complaint with the Superintendent of Police, Economic Offences Wing, St. Thomas Mount, Chennai 16, against the promotor Thiru. Subramaniam for the alleged fraudulent act."

Even though Respondent No.1 has denied in general terms the allegations made in para 2 and 3 of the affidavit filed in support of the writ petition and has put the petitioner to strict proof of such averments, it has been further stated:-

8. ... The respondent sent a letter to the borrower on 26.12.2000 and 14.06.2001 marking a copy to the collateral owner intimating the intention to take possession of the Collateral. The said letters addressed to the Collateral Owner were returned with the endorsement deceased. Hence the respondent issued a copy of the notice on 03.09.01 to the petitioner intimating the intention to take possession of the collateral property.

4. Respondent No.1 has also filed a typed set of papers. The criminal complaint lodged by Respondent No.1 dated 18.10.2000 has been filed. In such complaint, it has been indicated that the present Respondent No.2 has availed of the loan. It has been further stated that,
 ... The promoter had also offered the property at Door No.41D, Vivek Nagar, Ambattur, Chennai 53 owned by Thiru T.M. Balakrishnan as collateral security for the term loan of Rs.6.80 lacs on 28.02.95. Thiru.T.M. Balakrishnan who is the owner of the above property executed the documents to our Corporation on 28.07.95. The local enquiry reveals that Thiru.T.M. Balakrishnan had expired on 15.05.93. This proves that promoter had arranged to mortgage a fictitious collateral securities and had defrauded the Corporation.
It was also came to light that the person, who had called on to our Corporation on 28.07.95 and executed the memo of deposit of title deeds, was not the real owner (Thiru.T.M. Balakrishnan). However, on enquiry with his family it is learnt Thiru.T.M. Balakrishnan had expired on 15.05.93. This act of fraud committed by the promotor of the concern along with the fictitious person, would reveal that they had jointly conspired and indulged in causing great loss to the Corporation by producing all false, forged and fabricated documents.

5. Inspite of the notice, Respondent No.2 had not entered appearance. Since Respondent No.2 has not denied the allegations, the assertion of the petitioner that a sum of Rs.50,000/- had been returned to Respondent No.2 is accepted as correct.

6. On the basis of the aforesaid basic facts, which are no longer in dispute, the prayer made in the writ petition is required to be considered.

7. On a perusal of the counter affidavit as well as the criminal complaint filed by the first respondent, it is apparent that a collateral security has been purportedly created in respect of the property belonging to T.M. Balakrishnan (on his death belonging to his heirs including the petitioner). There is no dispute that Respondent No.2 had created a false and forged security in respect of the property belonging to said T.M. Balakrishnan. It is also not in dispute that the said T.M. Balakrishnan had died in the year 1993, whereas the collateral security has been created only in the year 1995. On the basis of these facts, which are more or less admitted by Respondent No.1, it is obvious that Respondent No.1 cannot claim any right to take possession of the property belonging to the present

petitioner.

8. The present case cannot be described as a case where the basic facts are in dispute. Therefore, there is no embargo for the writ court to decide about the rights of the petitioner vis-a-vis that of Respondent No.1 on the basis of the admitted / undisputed facts.

9. As already indicated, the collateral security in respect of the property belonging to T.M. Balakrishnan, now belonging to the present petitioner after the death of T.M. Balakrishnan, having admittedly been created by the second respondent by fraudulent means, the petitioner's right to get return of the original documents cannot be denied. Merely because the first respondent Corporation has also been duped by the second respondent, the first respondent cannot claim any right to retain the documents belonging to the petitioner and to claim any right to take possession of the property belonging to the petitioner in the purported exercise of jurisdiction under Section 29 of the Act.

10. For the aforesaid reasons, the writ petition is allowed and Respondent No.1 is directed to return the original documents relating to the disputed property to the petitioner. It is made clear that this order will not stand in way of Respondent No.1 in taking available legal proceedings against Respondent No.2 for realisation of the amount advanced to Respondent No.2. Respondent No.1 is also free to proceed with the criminal case, which has been initiated against Respondent No.2. There would be no order as to costs.

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